

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1025**

State of Minnesota,
Respondent,

vs.

Brent Richmond Perdue,
Appellant.

**Filed February 6, 2023
Affirmed
Wheelock, Judge**

Stearns County District Court
File Nos. 73-CR-18-327, 73-CR-18-812

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Chief Deputy County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Worke, Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges his sentence following his convictions for violation and attempted violation of a domestic-abuse no-contact order, arguing that the district court

should have awarded custody credit for time he spent in custody in Illinois on an offense unrelated to his Minnesota offenses. We affirm.

FACTS

Appellant Brent Richmond Perdue pleaded guilty to charges in two separate files for felony violation and felony attempted violation of a domestic-abuse no-contact order. The district court released Perdue without bail pending sentencing but required him to reside in Stearns County and comply with additional conditions.

Stearns County probation filed a conditional-release violation report shortly after Perdue's release, alleging that he failed to report his whereabouts and maintain contact with probation and that he failed to report a law-enforcement contact to probation. The district court issued a warrant ordering law enforcement to apprehend Perdue and Perdue to appear before the court.

Over three years had passed when Perdue was arrested in Winnebago County, Illinois. Authorities in Illinois held Perdue pending trial on new offenses committed in Illinois and on the Stearns County warrant. An Illinois court convicted Perdue of reckless driving and sentenced him to jail in Illinois. After Perdue completed his Illinois sentence, Minnesota extradited Perdue to Stearns County pursuant to the warrant.

The district court held a sentencing hearing, at which Perdue argued that he was entitled to custody credit for the 148 days he served in Illinois on his reckless-driving conviction as well as for the 15 days he was held in Illinois awaiting extradition. Perdue argued that this credit should be added to any custody credit he had accumulated in Minnesota, both prior to his release pending sentencing and since his extradition from

Illinois while awaiting sentencing.¹ The state opposed Perdue’s request for custody credit for the 148 days he served in Illinois on his convictions there.

The district court pronounced concurrent executed sentences of a year and a day with 200 days of custody credit in the first file and 21 months with 195 days of custody credit in the second file. The district court included credit for the 15 days Perdue spent in custody in Illinois awaiting extradition to Minnesota and the days Perdue was in custody in Minnesota on both Minnesota files, but it did not include the 148 days Perdue served in Illinois on his Illinois sentence.

Perdue appeals.

DECISION

When pronouncing a sentence, the district court must state the number of days spent in custody in connection with the offense and must deduct that time from the sentence. Minn. R. Crim. P. 27.03, subd. 4(B); *see State v. Clarkin*, 817 N.W.2d 678, 687 (Minn. 2012) (“A criminal defendant is entitled to jail credit for time spent in custody in connection with the offense or behavioral incident being sentenced.” (quotation omitted)). The defendant bears the burden of establishing entitlement to jail credit for any specific period of time. *Clarkin*, 817 N.W.2d at 687.

¹ In support of his argument to the district court, Perdue cited to a case that was before the Minnesota Supreme Court at the time—*State v. Kurtenbach*, No. A21-0526, 2021WL 4259152 (Minn. App. Sept. 20, 2021), *rev. granted* (Minn. Nov. 24, 2021) *and ord. granting rev. vacated* (Minn. June 9, 2022). In his petition for review to the supreme court, Kurtenbach raised the issue of whether the existing rule governing the application of interjurisdictional custody credit established by caselaw should be overruled. On June 9, 2022, the supreme court vacated the order granting review in *Kurtenbach*, and the appeal was dismissed on the basis that the petition for further review was improvidently granted.

“The decision to award custody credit is not discretionary with the district court.” *State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008). “The district court’s decision whether to award custody credit is a mixed question of fact and law; the court must determine the circumstances of the custody the defendant seeks credit for, and then apply the rules to those circumstances.” *State v. Roy*, 928 N.W.2d 341, 344 (Minn. 2019) (quotation omitted). We review the district court’s factual findings for clear error, but we review questions of law de novo. *Id.*

When determining whether custody credit applies, Minnesota courts “distinguish between intrajurisdictional custody (custody within Minnesota) and interjurisdictional custody (custody outside of Minnesota).” *Id.* at 345. Custody credit applies to intrajurisdictional custody. *Id.* The purpose of awarding credit for time in custody within Minnesota is to avoid the following concerns: de facto conversion of a concurrent sentence into a consecutive sentence, indigent persons serving longer sentences due to the inability to post bail, irrelevant factors affecting the length of incarceration, and prosecutors manipulating charging dates to increase the length of incarceration. *Id.* When determining credit for custody outside of Minnesota’s jurisdiction, we “apply a different test” and examine whether the defendant’s Minnesota offense is “the sole reason” for the interjurisdictional custody. *Id.* (quotation omitted).

To determine whether a defendant can receive custody credit for interjurisdictional custody, Minnesota courts apply the “solely-in-connection-with” test—“a defendant can only receive credit for time spent in the custody of another jurisdiction if the time was served solely in connection with the Minnesota offense.” *Id.*; accord *State v. Willis*,

376 N.W.2d 427, 427 (Minn. 1985) (holding that a defendant charged with a crime in Minnesota and detained in another state at the request of Minnesota authorities is not entitled to credit against a Minnesota sentence for time in custody in the other state unless the Minnesota charge was the sole reason the defendant was held by the other state).

Perdue asserts that the district court should have granted his request for custody credit for the 148 days he served on his Illinois sentence.² He first argues that Minn. Stat. § 609.145, subd. 2 (2016), and Minn. R. Crim P. 27.03, subd. 4(B), support granting him credit for all his time in custody in Illinois. Second, he argues that fairness and equity principles underlying Minnesota’s jail-credit jurisprudence support granting this credit. We disagree that the district court erred.

Perdue cites to Minn. R. Crim. P. 27.03, subd. 4(B), which requires the sentencing court to deduct credit for “the number of days spent in custody in connection with the offense or behavioral incident being sentenced.” He argues that his time in custody in Illinois was “undeniably in connection with” his Minnesota offense because he had a Minnesota warrant with a body-only hold while in custody in Illinois. Perdue then argues that because his time in custody in Illinois occurred after the district court accepted his guilty pleas on his Minnesota offenses but before it committed him to the commissioner of

² Perdue’s brief asserts that Perdue spent 128 days in custody in Illinois and requests credit for that time; however, the brief also notes that the district court denied his request for 148 days’ credit and consistently refers to September 8, 2021, to February 2, 2022, as the period for which Perdue should be entitled to further custody credit, which totals 148 days. Therefore, it appears the assertion in Perdue’s brief that he spent 128 days in custody in Illinois is an error, and we interpret Perdue’s request to be for 148 days of additional custody credit.

corrections, he is entitled to jail credit for the time he was incarcerated in Illinois because it was a “period of confinement” following conviction and preceding commitment pursuant to Minn. Stat. § 609.145, subd. 2. That statute provides that “[a] sentence of imprisonment upon conviction of a felony is reduced by the period of confinement of the defendant following the conviction and before the defendant’s commitment to the commissioner of corrections for execution of sentence unless the court otherwise directs.” *Id.*

Perdue’s Minnesota offense was not the sole reason for his custody in Illinois, however; the record shows Perdue was arrested in Illinois on new charges, was convicted, and served a 148-day sentence on his Illinois offense. Perdue concedes as much when he acknowledges in his brief that his Minnesota warrant was “part of the reason” for his Illinois arrest.

Despite Perdue’s reliance on Minn. Stat. § 609.145, subd. 2, and Minn. R. Crim. P. 27.03, subd. 4(B), to argue that he should have received custody credit for time in custody in Illinois, Minnesota caselaw is clear that the solely-in-connection-with test governs the application of interjurisdictional custody credit. *See Roy*, 928 N.W.2d at 345; *Willis*, 376 N.W.2d at 428; *State v. Mattson*, 376 N.W.2d 413, 416 (Minn. 1985). The district court applied the correct legal standard by denying Perdue’s request for custody credit for the time he served on his Illinois conviction and granting Perdue credit for the 15 days spent in Illinois custody that was solely in connection with his Minnesota offense—specifically, the 15 days he spent in custody in Illinois awaiting extradition on the Minnesota warrant.

Perdue next argues that principles of fairness and equity guiding Minnesota's jail-credit jurisprudence support granting credit for all the time he was in custody in Illinois. Perdue points to *Johnson*, 744 N.W.2d at 379, to highlight the concerns that support granting *intra-jurisdictional* custody credit, including de facto conversion of a concurrent sentence into a consecutive sentence, and expresses disagreement with the supreme court's decision in *Roy*, 928 N.W.2d at 345, in which it declined to apply the same policy concerns to requests for *inter-jurisdictional* custody credit. Perdue argues that if we apply the policy concerns upon which intra-jurisdictional custody credit is based to his case, fairness and equity favor granting his request to prevent a de facto conversion of his Illinois and Minnesota sentences from concurrent to consecutive.

As the supreme court reaffirmed in *Roy*, however, the policy concerns underlying intra-jurisdictional custody credit are not applicable to inter-jurisdictional custody. 928 N.W.2d at 345; *see Willis*, 376 N.W.2d at 428; *Mattson*, 376 N.W.2d at 416. Appellate courts have declined to apply factors from the intra-jurisdictional custody-credit test to cases involving inter-jurisdictional custody credit. *Roy*, 928 N.W.2d at 346 (citing *State ex rel. Linehan v. Wood*, 397 N.W.2d 341, 342 (Minn. 1986)). De facto consecutive-sentence conversion is a factor considered when applying the intra-jurisdictional custody-credit rule, not the inter-jurisdictional rule. *Id.*

Perdue's arguments notwithstanding, we are bound to follow the supreme court's precedent requiring that Perdue's Minnesota offense be the sole reason for his custody in Illinois for Perdue to receive inter-jurisdictional custody credit. *See State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018) (recognizing our repeated acknowledgement that the

court of appeals “is bound by supreme court precedent”). And “[t]he function of the court of appeals is limited to identifying errors and then correcting them.” *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). We conclude that the district court did not err in declining to grant Perdue’s request for custody credit for the additional 148 days he was incarcerated in Illinois on an Illinois conviction.

Affirmed.